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SENATE BILL 863

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO WATER AND SANITATION DISTRICTS; PROVIDING
ADDITIONAL PURPOSES FOR DISTRICTS; CHANGING THE QUALIFICATIONS
OF DISTRICT ELECTORS; PROVIDING STANDARDS FOR REVIEW OF
DISTRICT RATES BY THE PUBLIC REGULATION COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 73-21-2 NMSA 1978 (being Laws 1977,
Chapter 345, Section 1) is amended to read:

"73-21-2. SHORT TITLE. -- [~~Sections 75-18-1 through~~
~~75-18-49 NMSA 1953~~] Chapter 73, Article 21 NMSA 1978 may be
cited as the "Water and Sanitation District Act". "

Section 2. Section 73-21-3 NMSA 1978 (being Laws 1943,
Chapter 80, Section 2, as amended) is amended to read:

"73-21-3. PURPOSE OF WATER AND SANITATION DISTRICTS. --
Water and sanitation districts may be created for the purpose
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1 of:

2 A. purchasing, acquiring, establishing or
3 constructing waterworks to supply water for domestic,
4 commercial and industrial purposes by any available means to
5 persons within and without the boundaries of the district
6 [~~and~~]. For this purpose, any district [~~shall have~~] has the
7 power to extend its water lines outside [~~of~~] the boundaries of
8 the district for the purpose of securing a source of water
9 supply or for the purpose of supplying [~~such~~] the water to any
10 lands of the United States, [~~state of~~] New Mexico or Indian
11 reservations for use by any person, firm or corporation;

12 B. purchasing, acquiring, establishing or
13 constructing sanitary sewers or a system [~~or systems~~] of sewage
14 disposal, garbage or refuse disposal; [~~or~~]

15 C. purchasing, acquiring, establishing or
16 constructing streets and street improvements, including without
17 limitation grades, regrades, gravel, oiling, surfacing,
18 macadamizing, paving, crosswalks, sidewalks, driveway
19 approaches, curbs, gutters, culverts, drains, sewers, manholes,
20 inlets, outlets, retaining walls, bridges, overpasses, tunnels,
21 underpasses, approaches, artificial lights and lighting
22 equipment, parkways, grade separators, traffic separators and
23 traffic-control equipment and all appurtenances and incidentals
24 or any combination [~~thereof~~] of them, including real and other
25 property [~~there for or~~] for them;

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1 D. establishing or constructing park and
2 recreational improvements; ~~[or]~~

3 E. purchasing, acquiring, establishing,
4 constructing or operating other public facilities or economic
5 development projects; or

6 ~~[E-]~~ F. all of ~~[such]~~ the improvements in
7 Subsections A through ~~[D]~~ E of this section or any combination
8 ~~[thereof]~~ of them within or without the district. "

9 Section 3. Section 73-21-4 NMSA 1978 (being Laws 1943,
10 Chapter 80, Section 3, as amended) is amended to read:

11 "73-21-4. DEFINITIONS. -- As used in the Water and
12 Sanitation District Act:

13 A. "sewage disposal" includes all constructions for
14 collection, transportation, pumping, treatment and final
15 disposition of sewage;

16 B. "district" means a water and sanitation district
17 that is established pursuant to that act and that is either
18 entirely within or partly within and partly without one or more
19 counties, provided those parts or parcels of the district lying
20 in two or more counties are contiguous with one another, and
21 further provided, a district created pursuant to a petition
22 signed by the board of county commissioners of a county shall
23 be entirely within that county;

24 C. "board" means the board of directors of a
25 district;

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1 D. "taxpaying elector of a district", "qualified
2 elector" or "elector" means a person, [~~qualified~~] registered to
3 vote [~~at general elections~~] in any precinct in the state, who:

4 (1) is a resident of the district;

5 (2) is a nonresident of the district who pays,
6 or will be liable for paying, rates, tolls or charges set by
7 the board; or

8 (3) is a nonresident of the district who
9 either has paid or incurred a general tax liability on real
10 property within the district in the twelve months immediately
11 preceding a designated time or event or who is purchasing real
12 property within the district under a real estate contract where
13 a property tax has been paid or incurred on the real property
14 in the twelve months immediately preceding a designated time or
15 event; and

16 E. "publication" means once a week for three
17 consecutive weeks in at least one newspaper of general
18 circulation in the county in which all or the major portion of
19 the district is located. It is not necessary that publication
20 be made on the same day of the week in each of the three weeks,
21 but not less than fourteen days, excluding the day of first
22 publication, shall intervene between the first publication and
23 the last publication, and publication shall be complete on the
24 date of the last publication."

25 Section 4. Section 73-21-9 NMSA 1978 (being Laws 1943,

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1 Chapter 80, Section 8, as amended) is amended to read:

2 "73-21-9. HEARING ON PETITIONS--ELECTION FOR ORGANIZATION
3 AND OFFICERS. --

4 A. On the day fixed for the hearing or at an
5 adjournment of it, the court shall ascertain from the tax rolls
6 of the county in which the district is located or into which it
7 extends, from the last official registry list and from any
8 other evidence [~~which~~] that may be adduced, the total number of
9 taxpaying electors [~~residing within~~] of the proposed district.

10 B. If the court finds that no petition has been
11 signed and presented in conformity with the Water and
12 Sanitation District Act, or that the material facts are not as
13 set forth in the petition filed, it shall dismiss the
14 proceedings and adjudge the costs against the signers of the
15 petition or, if applicable, the board of county commissioners
16 of a county, in the proportion as it deems just and equitable.
17 No appeal or suit of error shall lie from an order dismissing
18 the proceedings; but nothing in that act shall prevent the
19 filing of a subsequent petition for similar improvements or for
20 a similar district, and the right to renew the proceeding is
21 expressly granted and authorized.

22 C. At any time after the filing of the petition for
23 the organization of a district and before the day fixed for the
24 hearing on it, the owner of any taxable property within the
25 proposed district may file a petition with the court stating

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1 reasons why the property should not be included in the district
2 and requesting that the property be excluded from it. The
3 petition shall be verified and shall describe the property
4 sought to be excluded. The court shall hear the petition and
5 all objections to it at the time of the hearing on the petition
6 for organization and shall determine whether the property
7 should be excluded or included in the district.

8 D. In determining whether or not the petition for
9 the creation of a water and sanitation district shall be
10 granted, the district court shall consult and request an
11 opinion from:

12 (1) the state engineer to determine whether
13 the proposed district has adequate water rights to implement
14 the proposed improvements; and

15 (2) the environmental improvement division of
16 the department of environment to determine, as to the
17 technological feasibility of the proposed improvements, whether
18 the water proposed to be supplied is of an acceptable quality
19 to conform with the state regulations and whether the liquid
20 and solid waste disposal proposals can conform with state
21 regulations.

22 E. The court may deny the petition or may order the
23 petition to be modified, if the court, after hearing on the
24 petition, finds that:

25 (1) the proposed water and sewage improvements

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1 cannot conform with the state regulations;

2 (2) the water and sewage improvements cannot
3 be implemented within a reasonable time taking into
4 consideration applications for state and federal grants;

5 (3) there is lacking an actual or impending
6 need for the water and sewage improvements proposed; or

7 (4) the boundaries of the proposed district
8 contain land that has no actual or impending need for the water
9 and sewage improvements or cannot be reasonably expected to
10 utilize the water and sewage improvements, unless the land is
11 otherwise required to be included in the proposed district by
12 rule or regulation of a federal agency.

13 F. Upon the hearing, if it appears that a petition
14 for the organization of a district has been properly signed and
15 presented and that the allegations of the petition are true,
16 the court shall order that the question of the organization of
17 the district be submitted to the taxpaying electors [~~residing~~
18 ~~within the boundaries~~] of the district as set forth in the
19 petition, as the boundaries were modified by the court in
20 determining that only property to be benefited by the proposed
21 improvements should be included within the boundaries of the
22 district, at an election to be held for that purpose, and the
23 order shall designate one or more polling places within the
24 district, and for each polling place so designated, shall
25 appoint three taxpaying electors of the district as judges of

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1 the election and two taxpaying electors of the district as
2 clerks of the election. The clerk of the court having
3 jurisdiction shall give published notice of the time and place
4 of an election to be held in the district not less than twenty
5 days after the first publication of the notice.

6 G. The election shall be held and conducted as
7 nearly as possible in the same manner as general elections in
8 this state. No special registration for the election is
9 required, but for the purpose of determining qualifications of
10 electors, the judges may use [~~the last official registry lists~~
11 ~~of electors residing in the district~~] official records, and, in
12 addition, they may require the execution of an affidavit
13 concerning the qualifications of any elector.

14 H. At the election, the taxpaying electors of the
15 district shall vote for or against the organization of the
16 district, and if in favor thereof, shall vote for three
17 taxpaying electors of the district who shall constitute the
18 board of directors of the district, one to act until the first
19 biennial election, one until two years and one until four years
20 after the election, except that at the election in a county
21 where the petition for the district was signed by the chairman
22 of the board of county commissioners, the [~~taxpaying~~] taxpaying
23 electors of the district shall vote only for or against the
24 organization of the district.

25 I. The judges of election shall certify the returns

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1 of the election to the district court having jurisdiction. If
2 a majority of the votes cast at the election are in favor of
3 the organization, the district court shall declare the district
4 organized and give it a corporate name by which, in all
5 proceedings, it shall thereafter be known, and designate the
6 first board of directors elected, except that a district
7 created pursuant to a petition signed by the chairman of the
8 board of county commissioners of a county shall appoint the
9 first board of directors as provided in Section 73-21-15.1 NMSA
10 1978. Thereupon the district shall be a governmental
11 subdivision of the state, except a district created pursuant to
12 a petition signed by the chairman of the board of county
13 commissioners of a county, which district shall be a
14 subdivision of the county. Every district shall be a body
15 corporate with all the powers of a public or quasi-municipal
16 corporation.

17 J. If an order is entered establishing the
18 district, the order is final and no appeal or writ of error
19 shall lie therefrom, and the entry of the order shall finally
20 and conclusively establish the regular organization of the
21 district against all persons except the state, in an action in
22 the nature of a writ of quo warranto, commenced by the attorney
23 general within thirty days after the decree declaring the
24 district organized. The organization of the district shall not
25 be directly or collaterally questioned in any suit, action or

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1 proceeding except as expressly authorized in the Water and
2 Sanitation District Act. "

3 Section 5. Section 73-21-15.1 NMSA 1978 (being Laws 1985,
4 Chapter 155, Section 8) is amended to read:

5 "73-21-15.1. BOARD--DISTRICT CREATED BY A BOARD OF COUNTY
6 COMMISSIONERS. --Notwithstanding any other provision of the
7 Water and Sanitation District Act relating to election of the
8 board, all members of the first board of any district created
9 pursuant to a petition signed by the chairman of the board of
10 county commissioners of a county shall be appointed by the
11 board of county commissioners. The board shall consist of five
12 directors who are [~~residents~~] taxpaying electors of the
13 district appointed for staggered terms so that the terms of two
14 directors expire in one year and the terms of three directors
15 expire in two years. Thereafter, all directors shall be
16 elected to two-year terms pursuant to the provisions of the
17 Water and Sanitation District Act. Any director appointed by
18 any board of county commissioners shall be eligible for
19 election, provided that no member of a board shall serve more
20 than two consecutive terms. "

21 Section 6. Section 73-21-55 NMSA 1978 (being Laws 1985,
22 Chapter 166, Section 3, as amended) is amended to read:

23 "73-21-55. DISTRICTS NOT SUBJECT TO UTILITY LAWS-- OPTION
24 TO SUBMIT TO REGULATION. --

25 A. No district organized under the provisions of

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1 the Water and Sanitation District Act is subject to the
2 jurisdiction of the [~~New Mexico~~] public [~~utility~~] regulation
3 commission or the terms and provisions of the Public Utility
4 Act [~~as amended~~], except as provided in Subsections B and C of
5 this section.

6 B. Any district organized under the provisions of
7 the Water and Sanitation District Act may elect by resolution
8 adopted by its board of directors to become subject to the
9 jurisdiction of the [~~New Mexico~~] public [~~utility~~] regulation
10 commission and to the terms and provisions of the Public
11 Utility Act [~~as amended~~]; provided, however, that in no event
12 shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to any
13 district making such an election.

14 C. If the board of directors has not elected to
15 become subject to the jurisdiction of the [~~New Mexico public~~
16 ~~utility commission under~~] public regulation commission as
17 provided for in Subsection B of this section, it shall
18 nevertheless file with the commission any rates, tolls and
19 charges proposed by the board, which shall be subject to
20 approval by the [~~New Mexico public utility~~] commission if
21 twenty-five of the [~~taxpayer electors~~] taxpaying electors of
22 the district or five percent of the [~~taxpayer electors~~]
23 taxpaying electors of the district, whichever is less, file a
24 petition protesting the rates, tolls or charges with the
25 commission within thirty days after the board proposes the

1 rates. Upon the filing of such a petition, the commission
2 shall hold a hearing pursuant to rules that it shall promulgate
3 to implement this subsection. At the hearing, the commission
4 shall determine whether the proposed rates, tolls or charges
5 are just and reasonable. In a commission proceeding arising
6 under this subsection, the burden of proof to show that the
7 increased rate, toll or charge is just and reasonable shall be
8 on the district."

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